

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BISMARK LITHGOW,

Petitioner,

- against -

WILLIAM F. KEYSER,

Respondent.
-----X

**USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 4/30/2021**

20-CV-3655 (VEC) (RWL)

ORDER

ROBERT W. LEHRBURGER, United States Magistrate Judge.

On July 20, 2020, this Court exercised its discretion to grant Petitioner's request for a stay so that he could exhaust state court remedies in regard to his claim concerning COVID-19. (Dkt. 23.) On April 29, 2021, in compliance with the Court's order to keep the Court apprised, Respondent filed a letter notifying the Court that Petitioner had filed a state court habeas petition, that the petition was dismissed, that Petitioner did not appeal that decision within the requisite deadline, and that Petitioner therefore could no longer exhaust his COVID-19 claim through the state court habeas petition. As a result, Petitioner cannot bring his COVID-19 claim in this federal habeas proceeding as he failed to fully exhaust his state court habeas claim. *See, e.g., Simpson v. Keyser*, No. 20-CV-6408, 2020 WL 5946944, at *3 (S.D.N.Y. Oct. 7, 2020).

Respondent also advised that Petitioner may have other procedural means to pursue his claim in state court.

Accordingly, the stay of this case is hereby LIFTED. If Petitioner would like to submit any opposition to the pending motion to dismiss (Dkts. 9-11), he shall do so no later than **June 15, 2021**. Respondent may file any reply no later than **July 15, 2021**.

SO ORDERED.



ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: April 30, 2021
New York, New York

Copies transmitted this date to all counsel of record. The Clerk's Office is respectfully directed to mail a copy of this Order to Petitioner pro se and note service on the docket:

Bismark Lithgow
DIN No. 15A1541
Sullivan Correctional Facility
P.O. Box 116
Fallsburg, NY 12733